THE PAROL EVIDENCE RULE. — Evidence is excluded, broadly speaking, on one of two grounds — either because the fact which it tends to prove is irrelevant, or because, though the fact is relevant, the law does not allow it to be proved by this means [1] In the first case, the evidence is rejected because of the substantive law; in the second, because of the law of evidence. In general, a fact is irrelevant because the law declares that it is, under the circumstances, of no consequence: thus, evidence that a person accused of manslaughter had no intent to kill is inadmissible, because the law says that the want of specific intent is no defense in a prosecution for manslaughter.[2] Though the result in this case is stated in terms of evidence, yet it is plain that the exclusion is not due to anything in the law of evidence, but to the substantive law of homicide. And if evidence which is thus irrelevant, by reason of the substantive law, is introduced without objection, the court should instruct the jury to disregard it.[3] On the other hand, it is a familiar principle that, if testimony is offered which is relevant but repugnant to some rule of evidence, it must be objected to at once; otherwise the objection will be considered waived.[4] For example, if hearsay is introduced without objection, the jury may give the evidence such weight as they see fit.[5]

When, therefore, extrinsic evidence tending to vary a written contract is admitted without objection, the question of whether the jury should, nevertheless, be instructed to disregard it depends on the view taken of the scope of the parol evidence rule. Does it declare that the fact offered to be proved is irrelevant, or does it simply forbid the proving of the fact in a particular way? Is this, in short, a rule of substantive law or a rule of evidence? It is submitted that extrinsic evidence is rejected because it is irrelevant. It is not a question as to how the outside agreement is to be proved; in any case, the law says that the parties are bound by the terms of the writing and that no outside agreement can affect their liability.[6] This has been distinctly held in the case of a bond,[7] and there seems to be no logical distinction for this purpose between a bond and a simple contract. Hence the jury should be instructed to disregard the extrinsic evidence, even though no objection was made to its introduction, and it is so held in a recent case in the Circuit Court of Appeals. *Pitcairn* v. *Philip Hiss Co.*, 125 Fed. Rep. 110 (C. C. A., Third Circ.). The subject, however, is so constantly discussed in terms of evidence that it is often assumed that there is no difference in kind between the parol evidence rule and the various rules of evidence. Thus, a late New York case holds that parol evidence, once admitted without objection, is in the record for all purposes. *Union Bank of Brooklyn* v. *Case*, 84 N. Y. Supp. 550. But, in this case as well as in several others reaching the same result,[8] the point under consideration seems to have been taken for granted. If the nature of the parol evidence rule is once fairly examined, there seems to be no answer to the reasoning of the Federal court.

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[1] See Thayer, Prel. Treat. on Ev., 265.
[2] State *v.* Vines, 93 N. C. 493.
[3] Utter *v.* Vance, 7 Blackf. (Ind.) 514.
[4] Barton Coal Co *v.* Cox, 39 Md. 1.
[5] Sherwood *v.* Sissa, 5 Nev. 349.
[6] See Thayer, Prel. Treat. on Ev. 390 *et seq.*
[7] Lucas *v.* Beebe, 88 Ill. 427.
[8] Frauenthal *v.* Bridgeman, 50 Ark. 348; Tebbs *v.* Weatherwax, 23 Cal. 58; Zabel *v.* Nyenhuis, 83 Ia. 756.